

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

APR - 9 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of US WEST Communications, Inc.)
for a Declaratory Ruling Regarding the)
Provision of National Directory Assistance)

CC Docket No. 97-172

DOCKET FILE COPY ORIGINAL

COMMENTS OF
AMERITECH

I. INTRODUCTION

Ameritech supports the request of US WEST Communications, Inc. ("US WEST"), as expressed in its Further Submission filed March 11, 1998,¹ for relief from certain provisions of the Telecommunications Act of 1996, as they would apply to National Directory Assistance service ("National DA"). National DA as offered by US WEST is not prohibited under the Act, because it does not meet the statutory definition of an interLATA service. Even if it were an interLATA service, National DA is a "previously authorized activity" permitted by Section 271(f). And, even if US WEST's National DA service were not a previously authorized service, Section 271's interLATA prohibition would not apply because National DA is an incidental interLATA service authorized by the Act. In any case, the FCC should forbear from applying the structural separation requirements of Section 272 of the Act to US WEST's National DA service.

II. NATIONAL DA IS NOT AN INTERLATA SERVICE.

¹ Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, CC Docket No. 97-172, Further Submission in Support, filed March 11, 1998 (hereinafter "Further Submission").

No. of Copies rec'd
List A B C D E

0211

The Act defines interLATA service as “telecommunications between a point located in a [LATA] and a point outside such [LATA].”² “Telecommunications,” in turn, is defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”³ As explained by US WEST, callers do not know or care which of the five directory service centers will handle their calls.⁴ Since a caller to the service does not, and cannot, “specify” the endpoint of a call, the service does not meet the statutory definition of an interLATA service.

This result is not changed by the fact that a caller may use the service to obtain a telephone number outside the caller’s home LATA. As discussed above, interLATA transmission is an essential element of an interLATA service. Nothing in the Act or elsewhere limits the scope of the telephone numbers a BOC may lawfully provide to directory assistance customers.

III. NATIONAL DA IS PERMITTED BY THE ACT AS A PREVIOUSLY AUTHORIZED ACTIVITY.

² 47 U.S.C. § 153 (21). As explained in Ameritech’s Answer to MCI’s complaint alleging that Ameritech’s implementation of National DA is an interLATA service, callers to the service are always in the same LATA as the operators providing the National DA service. Hence, because there is no transmission across a LATA boundary, Ameritech’s National DA service is not an interLATA service. MCI Telecommunications Corp. v. Illinois Bell et al., FCC File No. E-97-19, Answer of Ameritech, filed May 27, 1997, at 11.

³ 47 U.S.C. § 153 (43) (emphasis added).

⁴ Further Submission, at 12.

Even if National DA were an interLATA service, it would nonetheless be permitted by Section 271(f) of the Act, which exempted from the interLATA prohibition “any activity to the extent authorized by ... an order entered by the United States District Court for the District of Columbia ... if such order was entered on or before such date of enactment”⁵ As noted by US WEST, the MFJ Court did grant BOCs interLATA authority for directory assistance, confirming that “the decree does not prohibit the Operating Companies from providing their own Official Services, including, if necessary, by the construction of the appropriate inter-LATA facilities.”⁶ Since the Court’s definition of “Official Services” specifically included “service circuits ... used to receive repair calls and directory assistance calls,”⁷ National DA is permitted by the Act as a previously authorized service.

IV. NATIONAL DA IS PERMITTED BY THE ACT AS AN INCIDENTAL INTERLATA SERVICE.

Even if the Commission were to find that (1) National DA constitutes an interLATA service and (2) US WEST’s National DA service is not a previously-authorized activity, US WEST would nonetheless have authority to provide National DA as an incidental interLATA service under the Act. Section 271(g) permits the Bell Operating Companies (“BOCs”) to provide certain “incidental interLATA services” immediately upon enactment of the Act, without prior authorization either inside or outside of a BOC’s service region.⁸ Activities permitted as “incidental interLATA services” include “a service that permits a customer that is

⁵ 47 U.S.C. § 271(f).

⁶ U.S. v. Western Electric Co., Inc., 569 F Supp. 1057, 1101 (D.D.C., 1983).

⁷ Id., at 1098 (n. 179) (emphasis added).

located in one LATA to retrieve stored information from ... information storage facilities of [the BOC] that are located in another LATA.”⁹

National DA clearly qualifies as a service permitted by the statute. As explained by US WEST,¹⁰ customers located within one LATA can retrieve information (i.e., telephone numbers) stored within information storage facilities (i.e., databases, printed directories, or other media) which are located in another LATA and owned by US WEST. The fact that a live operator may facilitate the customer’s retrieval of information from US WEST’s information storage facilities is irrelevant to the statutory language, which does not specify any particular means by which a customer must “retrieve information.”

**V. THE FCC CAN, AND SHOULD, FORBEAR FROM REQUIRING
STRUCTURAL SERPARATION UNDER SECTION 272 OF THE ACT.**

As discussed in Section II above, Ameritech believes that National DA is not an interLATA service at all, and thus neither the interLATA prohibition of Section 271 nor the separate subsidiary requirement of Section 272 applies to US WEST’s provision of the service. Should the Commission nonetheless hold National DA to be an incidental interLATA service, it should forbear from applying Section 272’s structural separation requirements, as authorized by Section 10 of the Act.¹¹

II. _____

⁸ 47 U.S.C. § 271(b)(3).

⁹ 47 U.S.C. § 271(g)(4).

¹⁰ Further Submission, at 16.

¹¹ Should the Commission find US West’s National DA to be a “previously authorized activity”, no separate subsidiary requirements attach, as provided in 47 U.S.C. §272(a)(2)(B)(iii). Hence in that case, no Section 272 forbearance is required.

As explained by US WEST,¹² Section 10 specifies that the Commission “shall forbear from applying ... any provision of this Act” if it determines that three requirements are met: (1) “enforcement of the provision is not necessary to ensure that the charges, practices, classifications or regulations” regarding the carrier or service in question are “just and reasonable, and are not unjustly or unreasonably discriminatory;” (2) enforcement is “not necessary for the protection of consumers;” and (3) forbearance is “consistent with the public interest.”¹³ Forbearance from the application of Section 271’s interLATA prohibition is not permitted until the Commission has determined that the so-called “competitive checklist” requirements set forth in Sections 251(c) and 271 have been “fully implemented.”¹⁴

The Commission has held that Section 10(d)’s limitation precludes forbearance only as to “any service for which a BOC must obtain prior authorization under Section 271(d)(3).”¹⁵ No such “prior authorization” is required here because, as explained above, National DA is not an interLATA service, or, alternatively, is a permitted interLATA service under Section 271(f). Hence, the Commission must forbear from applying Section 272 to National DA if the three requirements are met – as US WEST has amply demonstrated.

US WEST has shown that enforcement of Section 272’s separation requirements is not necessary to ensure that charges, practices and classifications are just, reasonable and not unjustly or unreasonably discriminatory, and likewise, that consumer protection is not an

¹² Id., at 17.

¹³ 47 U.S.C. § 160(a).

¹⁴ 47 U.S.C. § 160(d).

issue. US WEST has long offered its service under state-approved tariffs, at rates competitive with those of others offering similar services.¹⁶ US WEST's service is subject to full regulatory oversight and approval, as well as significant competition from IXC's, Internet service providers, existing directory publications, and many other sources. The 1996 Act also provides additional safeguards against possible misconduct, by requiring US WEST and other LECs to provide subscriber list information on a nondiscriminatory basis.¹⁷ Forbearance from the application of Section 272 is also shown by US WEST to be in the public interest, as separation would necessarily increase the costs of providing the already-popular service, and result in increased prices to consumers or discontinuance of the service.¹⁸ Since all three of Section 10's conditions are satisfied, forbearance should be granted.

VI. CONCLUSION

II. _____

¹⁵ Bell Operating Companies' Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order, DA 98-220 (rel. Feb. 6, 1998), at ¶ 23.

¹⁶ Further Submission, at 19-20, 23-25.

¹⁷ 47 U.S.C. § 222(e).

¹⁸ Further Submission, at 20-25, 27-30.

For the reasons set forth above, the Commission should hold US WEST's National DA offering to be a permissible BOC service, because it is (1) not an interLATA service, (2) a previously-authorized activity under Section 271(f), or (3) an incidental interLATA service authorized by Section 271(g)(4). Moreover, US WEST's request for forbearance from Section 272's structural separation requirements to the service should also be timely granted because all three of the conditions for Section 10 forbearance are satisfied.

Respectfully submitted,



Frank Michael Panek
Attorney for Ameritech
Room 4H84
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025
(847) 248-6064

Dated: April 9, 1998